



# STATE OF INDIANA

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January 22, 2016

Mr. Clyde Piggie  
Westville Correctional Facility  
5501 South 1100 West  
Westville, Indiana 46391

*Re: Formal Complaint 15-FC-334; Alleged Violation of the Access to Public Records Act by the State of Indiana Department of Correction*

Dear Mr. Piggie:

This advisory opinion is in response to your formal complaint alleging State of Indiana Department of Correction ("DOC") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 et. seq. DOC responded via Mr. Bob Bugher, Esq., Chief Legal Counsel. His response is enclosed for your review. Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on December 30, 2015.

## **BACKGROUND**

Your complaint dated December 28, 2015 alleges the Department of Correction violated the Access to Public Records Act by failing to respond to your request for documents.

On December 4, 2015, you requested information related to certain correctional officers at Westville Correctional Facility. Your request was denied due to the fact the documents requested are not considered public records. You sent your requests to two (2) named individuals, however, it appears as if the Litigation Liaison for the Correctional Facility acknowledged and subsequently denied your request within seven (7) days on December 10, 2015. The Litigation Liaison relied on Indiana Administrative Code as grounds for his denial. However, the Liaison did not cite a specific provision.

On January 25, 2016, DOC responded. Counselor Bugher notes you are requesting records relating to correctional officers. DOC has chosen to use its discretion under Ind. Code § 5-14-3-4(b)(23) to withhold the records.

## ANALYSIS

The public policy of the APRA states that “(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information.” See Ind. Code § 5-14-3-1. The State of Indiana Department of Correction is a public agency for the purposes of the APRA. See Ind. Code § 5-14-3-2(n)(1). Accordingly, any person has the right to inspect and copy DOC’s disclosable public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. See Ind. Code § 5-14- 3-3(a).

A request for records may be oral or written. See Ind. Code § 5-14-3-3(a); § 5-14-3-9(c). If the request is delivered by mail or facsimile and the agency does not respond to the request within seven (7) days of receipt, the request is deemed denied. See Ind. Code § 5-14-3-9(b). A response from the public agency could be an acknowledgement the request has been received and information regarding how or when the agency intends to comply.

You sent your requests to the DOC Commissioner and to a named individual at Westville Correctional Facility. Westville’s Litigation Liaison responded on their behalf within seven (7) days. This is a common practice and perfectly appropriate. However, the denial failed to state specific statutory grounds. Under Ind. Code § 5-14-3-1, the “burden of proof for the nondisclosure of a public record” rests with the public agency. This Office has consistently interpreted this provision to require a public agency to cite a specific provision of Indiana Code as the grounds for nondisclosure. Any failure to cite code would therefore be improper.

You have not explicitly alleged the denial was improper; however, the disclosure of this information is at DOCs discretion. Under Ind. Code § 5-14-3-4(b)(23), DOC offenders are not entitled to records which contain personal information of correctional officers. Due to your status as an incarcerated DOC offender, you are not entitled to the information or records sought.

## CONCLUSION

Based on the forgoing, it is the Opinion of the Public Access Counselor the DOC has discretion to deny access to the records you requested.

Regards,

A handwritten signature in black ink, appearing to read 'L. H. Britt', with a stylized, sweeping flourish extending from the bottom left.

Luke H. Britt  
Public Access Counselor

Cc: Mr. Bob Bugher, Esq.; Mr. John F. Schrader